

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

CONFERENCE COMMITTEE SB 243

Call to Order: By **CHAIRMAN FRED THOMAS**, on March 26, 1999 at
3:39 P.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas, Chairman (R)
Sen. Mike Halligan (D)
Sen. Duane Grimes (R)
Rep. Dan McGee (R)
Rep. Jim Shockley (R)
Rep. Tom Facey (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Valencia Lane, Legislative Services Division

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: SB 243

Discussion:

EXHIBIT (ccs68sb0243a01) was handed out to the Committee members.

CHAIRMAN THOMAS asked **(EXHIBIT 1)** amended sections that **REP. MOLNAR'S** amendments took out.

REP. MCGEE explained the existing law in the amendment was stricken. **REP. MOLNAR'S** amendment was to strike all the new language and basically put it back into its original form.

CHAIRMAN THOMAS asked if **REP. CLARK'S** amendment had amended this section, then **REP. MOLNAR'S** amendment took it out of the bill, so the first and second amendments are gone.

REP. MCGEE responded, "that is correct".

CHAIRMAN THOMAS discussed with other Committee members why the amendments were stricken and the words 'serious crimes' were taken out.

SEN. HALLIGAN thought they were stricken because Judge Larson did not want the youth after their hearing, when they were continuing the second part of their sentence, to be sent back to prison. They would be sent to boot camp or a pre-release center.

REP. MCGEE said if he remembered correctly, in order to continue jurisdiction, it was worthwhile to send a person to a pre-release center. There are other programs affiliated with pre-release centers which are not affiliated with anything else.

CHAIRMAN THOMAS alleged following that, it does mention pre-release center.

REP. SHOCKLEY said it was his understanding they put the juveniles in Pine Hills until they turn 18, even if they are serving a long sentence. After they turn 18, they have to take them from Pine Hills. They had to research State adult correction facilities, otherwise they would go to boot camp or a pre-release center.

CHAIRMAN THOMAS asserted on **REP. CLARK'S** amendments, amendment 1 and 2 were eliminated by **REP. MOLNAR'S** amendments. Amendment number 3 is still in place. He asked **SEN. HALLIGAN** to address **REP. MOLNAR'S** amendments.

SEN. HALLIGAN informed the Committee the Supreme Court case which dealt with the Extended Jurisdiction Act in finding parts of it

unconstitutional, they, in part hung their hat on the retribution which seemed to be in the existing purpose clause of the Youth Court Act. When you read the constitutional rights of youths, they have the same rights as adults, unless precluded by laws which enhance the protection of such persons. With Judge Larson's help, they tried to keep the immediate consequences which still try to take out any retribution parts of that and address the court's concerns.

REP. MCGEE stated if you look at the capitalized language on lines 10 and 11, that was offered as an amendment in House Judiciary, it was determined it was inappropriate language. The application of natural and logical consequences when you are dealing with something in the Youth Court Act does not apply. This is why this particular section was re-visited. Therefore, the substitute motion was to strike the whole section. He said he finds the language in current law to be appropriate.

REP. SHOCKLEY understood the Supreme Court's problem with this is that as drafted, a youth could get more than an adult. He thought there might be a problem with the word 'retribution'.

SEN. GRIMES explained **REP. SOFT** deals with all this in his line of work and takes these types of kids to decreasing areas of penalties in a short time. To child psychologists this may have some meaning whereas it doesn't necessarily in the law. He thought there might be another way to phrase it to make it technically correct, but would still capture **REP. SOFT's** intentions.

SEN. HALLIGAN alleged there to be confusion on who drafted what amendments. He asked where the word 'retribution' came from.

REP. SHOCKLEY answered that is the way the regular statute read.

SEN. HALLIGAN asked **Sandra Oitzinger, Executive Director, Juvenile Probation Officer's Association** for comments on this.

Ms. Oitzinger explained what the court was commenting on was the State's interpretation of what the legislature's intent was at the time they passed it. The State asserts that the Extended Jurisdiction Prosecution Act was designed by the legislature to address the rising tide of juvenile criminal conduct. She does believe Judge Larson wanted to be clear that we are not talking retribution in this situation.

REP. SHOCKLEY suggested they take **REP. MOLNAR'S** amendment out and take Judge Larson's amendment out and right after court put a period on line 14. Start a new sentence which says retribution

is not a consideration. He said we should be concerned with community protection as well as the rehabilitation of the juvenile.

CHAIRMAN THOMAS asked if it could be found that youth delinquency through immediate, consistent, forceful and avoidable consequence could be retribution. Is that what the court was talking about? He didn't see how it could be. What about leaving that first sentence in and leaving in Judge Larson's language as well?

REP. SHOCKLEY thought all they needed to do is take out the word 'establish'.

SEN. GRIMES asked if they struck the first three lines and started with **REP. CLARK'S** amendment language instead of 'natural, logical, and legal'. Would it still say the same thing?

REP. SHOCKLEY stated either would work for him.

SEN. HALLIGAN explained part of the criticism of the Youth Court Act which was done by the auditors was the fact there were no immediate, consistent and enforceable language. Youth Justice Committee met for 18 months to work on that language.

Motion: **SEN. GRIMES** moved that **THE AMENDMENT BE ADOPTED.**

Discussion:

REP. MCGEE remarked the language by **REP. SOFT** came directly from the language from the Yellowstone Treatment Center policy. He said he is not an attorney, but John McMaster told him this cannot be done, so that is why it has been re-visited. John McMaster explained it to the committee, and it was taken out. That is the reason they went back to **REP. MOLNAR'S** language.

REP. MCGEE stated he agreed with **SEN. HALLIGAN**. He suggested this Committee not put back in the language on lines 10 - 12.

SEN. THOMAS proposed the yellow copy without **REP. SOFT'S** language including leaving the old language in, and putting in Judge Larson's language. **SEN. THOMAS** read this to the Committee.

SEN. GRIMES asked what to do with the words 'detention, competency and community protection'.

SEN. HALLIGAN explained those are the programs which meet the constitutional language.

REP. MCGEE contended they are in the language twice, so we do not need the capitalized version.

SEN. THOMAS explained they were stricken, then the underlined language put them back in.

SEN. HALLIGAN thought the capitalized version could be deleted.

REP. SHOCKLEY thought those words should be left in the language.

Substitute Motion: **SEN. HALLIGAN** made a substitute motion **TO FURTHER AMEND SB 243.**

Discussion:

SEN. THOMAS clarified **SEN. HALLIGAN'S** motion by explaining they would not adopt **REP. MOLNAR'S** amendments.

SEN. HALLIGAN further explained in a Conference Committee, the Committee has to amend the House amendments. This, in effect, would be reinserting section one with our Conference Committee amendments.

Vote: Motion that **THIS AMENDMENT BE ADOPTED carried unanimously.**

ADJOURNMENT

Adjournment: 4:11 P.M.

SEN. FRED THOMAS, Chairman

Gilda Clancy, Secretary

FT/GC

EXHIBIT (ccs68sb0243aad)